

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION

OPTIMORPHIX, INC.,

*Plaintiff,*

v.

BROADCOM INC.,

*Defendant.*

Civil Action No. 5:23-cv-134-RWS-JBB

**JURY TRIAL DEMANDED**

**PLAINTIFF OPTIMORPHIX, INC.'S OPPOSITION TO  
BROADCOM INC.'S MOTION TO DISMISS**

Defendant's Motion to Dismiss should be denied as moot. On November 20, 2023, Plaintiff OptiMorphix, Inc. ("Plaintiff" or "OptiMorphix") filed its Complaint in this case against Defendant Broadcom Inc. ("Defendant" or "Broadcom"). On January 26, 2024, Broadcom filed a Motion to Dismiss OptiMorphix's Original Complaint. Dkt. No. 13.

Through meeting and conferring, OptiMorphix, Broadcom, and Broadcom's subsidiary, CA, Inc., agreed that OptiMorphix would file a First Amended Complaint substituting CA, Inc. for Broadcom. Pursuant to Federal Rule of Civil Procedure 15(a)(2), OptiMorphix obtained Broadcom and CA, Inc.'s written consent to file the First Amended Complaint ("FAC") in this action.

OptiMorphix's FAC directs the infringement allegations against a new party (CA, Inc.). Upon its filing, the FAC became the operative complaint, rendering Broadcom's Motion to Dismiss (Dkt. No. 13) moot. *See, e.g., Stragent v. BMW of N. Am., LLC*, 2017 U.S. Dist. LEXIS 156076, at \*3-4 (E.D. Tex. Mar. 27, 2017) (Schroeder, J.) (denying a motion to dismiss as moot because "[a]n amended complaint supersedes the original complaint and renders the original complaint as having no legal effect.") (citing *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994)); *Oscar Private Equity Invs. v. Allegiance Telecom*, 2004 U.S. Dist. LEXIS 4169, \*7-8 (N.D. Tex. Mar. 17, 2004) (explaining "Plaintiffs inform the Court that they intend to file an amended complaint and that the amended complaint will set forth additional allegations . . . Because Plaintiffs will file an amended complaint, Defendants' Motion to Dismiss is DENIED as moot.").

Because the First Amended Complaint has superseded the Original Complaint and become the operative pleading, Plaintiff respectfully requests that the Court deny Defendant's Motion to Dismiss the Original Complaint as moot. *Stragent*, 2017 U.S. Dist. LEXIS 156076, at \*3-4.

Dated: February 23, 2024

Respectfully submitted,

/s/ Daniel P. Hipskind

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*Attorneys for OptiMorphix, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that on February 23, 2024, a copy of the foregoing document was served on all counsel who have appeared in this case via email.

/s/ Daniel P. Hipskind  
Daniel P. Hipskind